WITHDRAWAL SHEET

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Collection Name KIMMITT, ROBERT: FILES

Withdrawer SMF 7/9/2008

File Folder LEGAL: IRAN (11/01/1981-11/03/1983)

FOIA M2008-113 FELIPPONE

Box Number ~~90301~~ PRC Box 9

19

ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
54852	CABLE	251118Z NOV 81 **D 5/27/2011 M113/1**	3	11/25/1981	B1	B3
54855	CABLE	072152Z DEC 81 **D 2/24/2010 M2008-113**	1	12/7/1981	B1	
54858	CABLE	082227Z DEC 81 **D 2/24/2010 M2008-113**	1	12/8/1981	B1	
54859	MEMO	CLARK/MEESE TO THE PRESIDENT RE REPRESENTATION OF US BEFORE IRAN-US CLAIMS TRIBUNAL DOCUMENT PENDING REVIEW IN ACCORDANCE WITH E.O. 13233	1	ND		
54861	MEMO	DUPLICATE OF 54859 DOCUMENT PENDING REVIEW IN ACCORDANCE WITH E.O. 13233	1	ND		
54863	TRANSMITTAL SHEET	NSC PROFILE SHEET **R 5/27/2011 M113/1**	1	4/13/1983	B1	
54865	MEMO	HILL TO CLARK RE CLAIMS NEGOTIATION WITH IRAN **D 5/27/2011 M113/1**	2	4/13/1983	B1	B3

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]
B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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ID	Document Type Document Description	No of pages	Doc Date	Restrictions
54855	CABLE 072152Z DEC 81	1	12/7/1981	B1

Freedom of Information Act - [5 U.S.C. 552(b)]

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19

ID	*Document Type* *Document Description*	*No of pages*	*Doc Date*	*Restrictions*
54858	CABLE 082227Z DEC 81	1	12/8/1981	B1

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]
B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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NSC/S PROFILE UNCLASSIFIED ID 8200910

legal -- Iran

RECEIVED 12 FEB 82 12

TO CLARK FROM MORRIS DOCDATE 12 FEB 82

KEYWORDS: IRAN LEGAL ISSUES

ECONOMICS

SUBJECT: REPRESENTATION OF US BEFORE IRAN - US CLAIMS TRIBUNAL

ACTION: FWD TO PRES FOR DECISION DUE: 15 FEB 82 STATUS X FILES

FOR ACTION

CLARK

FOR CONCURRENCE

FOR INFO

KEMP

KIMMITT

BAILEY

COMMENTS

REF# LOG 8200629 NSCIFID (H /)

ACTION OFFICER (S)	ASSIGNED	ACTION REQUIRED	DUE	COPIES TO

DISPATCH _____ W/ATTCH FILE _____ (C)

54859

MEMORANDUM

ACTION

THE WHITE HOUSE

WASHINGTON

FOR THE PRESIDENT

FROM: EDWIN MEESE III
WILLIAM P. CLARK

SUBJECT: Representation of the United States Before Iran-United States Claims Tribunal

Issue: The Attorney General and the Secretary of State disagree on departmental authority for the designation of agents to represent the United States before international tribunals. Although the immediate disagreement concerns representation of the United States against claims in excess of $10 billion asserted by Iran before the Iran-U.S. Claims Tribunal, the dispute is more fundamental, and could encompass claims asserted by or against the United States before any international tribunal on any issue.

Attorney General Position: The Attorney General relies on 29 U.S.C. 516 (1966), reserving to his office "except as otherwise authorized by law -- the conduct of litigation to which the United States is a party..." It is argued that the United States, having been called upon to "litigate" Iranian claims, the Attorney General is vested with authority and charged with a duty to represent the United States. Moreover, the United States will be best represented by his office because therein reside abundant litigating skills.

State Department Position: With exceptions the Secretary deems distinguishable, the Secretary's Legal Adviser has traditionally represented the United States before international tribunals. The Secretary argues that the litigation test relied upon by the Attorney General, has not heretofore been seriously asserted because proceedings within international tribunals do not constitute litigation. Trial practices, rules of evidence and procedure, and finding determininations are of little significance in international tribunal proceedings. Those proceedings are governed by international law and rules, and have profound foreign policy implications. The result sought in a particular instance is not necessarily that dictated by a strict application of legal principles. The Secretary is best able to determine not only what objectives to seek, but also how those objectives should be sought, and his directions can best be implemented by State lawyers with foreign perspective and international adjudicating experience.

Discussion: While legal considerations are critical in proceedings before international tribunals, they must be tempered with foreign policy considerations, the significance of which is best judged in any particular instance by the Secretary of State. Given that the Attorney General's Office has superior litigating skills, those tools do not appear sufficiently critical in international proceedings to offset State's foreign policy prerogatives as exercised through its lawyers experienced in international adjudications. Historical and legislative interpretation of that statue relied on by the Attorney General does not support the claim that "litigation" is intended to include proceedings before international tribunals.

Recommendation: That the Secretary of State, subject to the President's prerogatives, continue to designate agents to represent the United States and to control proceedings before international tribunals.

Approve

THE WHITE HOUSE

WASHINGTON

February 12, 1982

MEMORANDUM FOR THE SECRETARY OF STATE
THE SECRETARY OF THE TREASURY
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL

SUBJECT: Representation of the United States before the Iran-United States Claims Tribunal

Issue: The Attorney General and the Secretary of State disagree on departmental authority for the designation of agents to represent the United States before International tribunals. Although the immediate disagreement concerns representation of the United States against claims in excess of $10 billion asserted by Iran before the Iran-U.S. Claims Tribunal, the dispute is more fundamental, and could encompass claims asserted by or against the United States before any international tribunal on any issue.

Decision: The President, being aware of relevant facts and having considered the stated positions and arguments urged by the Attorney General and by the Secretary of State, has concluded that for foreign policy reasons the best interests of the United States require that the Secretary of State, subject to the President's prerogative, will continue to designate agents to represent the United States and will continue to control proceedings before international tribunals.

The President is aware of the Attorney General's practice of providing assistance to the Secretary when requested in particular proceedings before international tribunals, and approves such practice.

FOR THE PRESIDENT:

Edwin Meese, III

0910

54861

MEMORANDUM

ACTION

THE WHITE HOUSE

WASHINGTON

February 16, 1982

FOR THE PRESIDENT

FROM: EDWIN MEESE III
WILLIAM P. CLARK

SUBJECT: Representation of the United States Before Iran-United States Claims Tribunal

Issue: The Attorney General and the Secretary of State disagree on departmental authority for the designation of agents to represent the United States before international tribunals. Although the immediate disagreement concerns representation of the United States against claims in excess of $10 billion asserted by Iran before the Iran-U.S. Claims Tribunal, the dispute is more fundamental, and could encompass claims asserted by or against the United States before any international tribunal on any issue.

Attorney General Position: The Attorney General relies on 29 U.S.C. 516 (1966), reserving to his office "except as otherwise authorized by law -- the conduct of litigation to which the United States is a party..." It is argued that the United States, having been called upon to "litigate" Iranian claims, the Attorney General is vested with authority and charged with a duty to represent the United States. Moreover, the United States will be best represented by his office because therein reside abundant litigating skills.

State Department Position: With exceptions the Secretary deems distinguishable, the Secretary's Legal Adviser has traditionally represented the United States before international tribunals. The Secretary argues that the litigation test relied upon by the Attorney General, has not heretofore been seriously asserted because proceedings within international tribunals do not constitute litigation. Trial practices, rules of evidence and procedure, and finding determininations are of little significance in international tribunal proceedings. Those proceedings are governed by international law and rules, and have profound foreign policy implications. The result sought in a particular instance is not necessarily that dictated by a strict application of legal principles. The Secretary is best able to determine not only what objectives to seek, but also how those objectives should be sought, and his directions can best be implemented by State lawyers with foreign perspective and international adjudicating experience.

Discussion: While legal considerations are critical in proceedings before international tribunals, they must be tempered with foreign policy considerations, the significance of which is best judged in any particular instance by the Secretary of State. Given that the Attorney General's Office has superior litigating skills, those tools do not appear sufficiently critical in international proceedings to offset State's foreign policy prerogatives as exercised through its lawyers experienced in international adjudications. Historical and legislative interpretation of that statue relied on by the Attorney General does not support the claim that "litigation" is intended to include proceedings before international tribunals.

Recommendation: That the Secretary of State, subject to the President's prerogatives, continue to designate agents to represent the United States and to control proceedings before international tribunals.

Approve President approved Disapprove ____

Kimmitt

0910

Legal Draw

THE WHITE HOUSE

WASHINGTON

February 19, 1982

MEMORANDUM FOR THE SECRETARY OF STATE
THE SECRETARY OF THE TREASURY
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL

SUBJECT: Representation of the United States before the Iran-United States Claims Tribunal

Issue: The Attorney General and the Secretary of State disagree on departmental authority for the designation of agents to represent the United States before international tribunals. Although the immediate disagreement concerns representation of the United States against claims in excess of $10 billion asserted by Iran before the Iran-U.S. Claims Tribunal, the dispute is more fundamental, and could encompass claims asserted by or against the United States before any international tribunal on any issue.

Decision: The President, being aware of relevant facts and having considered the stated positions and arguments urged by the Attorney General and by the Secretary of State, has concluded that for foreign policy reasons the best interests of the United States require that the Secretary of State, subject to the President's prerogative, will continue to designate agents to represent the United States and will continue to control proceedings before international tribunals.

The President is aware of the Attorney General's practice of providing assistance to the Secretary when requested in particular proceedings before international tribunals, and approves such practice.

FOR THE PRESIDENT:

Edwin Meese III

EDWIN MEESE, III
COUNSELLOR TO THE PRESIDENT

cc: William P. Clark
Craig L. Fuller

National Security Council
The White House

Package # 910

82 FEB 12 A10:39

	SEQUENCE TO	HAS SEEN	ACTION
John Poindexter	1	JP	
Bud McFarlane	2	BM	
Jacque Hill	3	JH	
Judge Clark	4	WJC	A
John Poindexter	5	JP	
Staff Secretary	6		
Sit Room			

I–Information A–Action R–Retain D–Dispatch

DISTRIBUTION

CY To VP		Show CC	
CY To Meese		Show CC	
CY To Baker		Show CC	
CY To Deaver		Show CC	

Other

COMMENTS

For 0930 meeting on TUES 16 FEB. I have sent Ed Meese a copy with a note saying you would like to discuss with Pres. on Tuesday.

NSC/S PROFILE UNCLASSIFIED ID 8301233

RECEIVED 23 FEB 83 17

O WHEELER FROM PETERSON, R DOCDATE 23 FEB 83

EYWORDS: IRAN LEGAL ISSUES

LEGISLATIVE REFERRAL

UBJECT: STATE DRAFT PROPOSAL RE IRAN CLAIMS ACT

ACTION: MEMO WHEELER TO PETERSON DUE: 28 FEB 83 STATUS S FILES

FOR ACTION	FOR CONCURRENCE		FOR INFO
KEMP	KIMMITT	SOMMER	DUR

✓ (1) Convey to Kemp – O, K, 2-24-83

(2) File: Legal -- Iran.

COMMENTS

REF# LOG 8204329 8208272 NSCIFID (J /)

CTION OFFICER (S)	ASSIGNED	ACTION REQUIRED	DUE	COPIES TO

ISPATCH W/ATTCH FILE (C)

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

1233

SPECIAL

February 23, 1983

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer-

Department of the Treasury
Federal Reserve Board
National Security Council
Department of Defense
Foreign Claims Settlement Commission

SUBJECT: State draft proposal, the "Iran Claims Act."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than FRIDAY, MARCH 4, 1983. Phone comments are acceptable.

Questions should be referred to Tracey Lawler (395-4710) the legislative analyst in this office.

Ronald K. Peterson

RONALD K. PETERSON FOR
Assistant Director for
Legislative Reference

Enclosures
cc: Bruce Sasser
Frank Seidl
Roger Greene

SPECIAL

United States Department of State

Washington. D.C. 20520

Dear Mr. Speaker:

I transmit herewith a bill to authorize various agencies of the Executive Branch to take certain actions in furtherance of the settlement of claims between United States nationals and the Government of Iran pursuant to the Algiers Accords of January 19, 1981. The proposed legislation would authorize the Foreign Claims Settlement Commission to adjudicate a number of such claims and would permit the Federal Reserve Bank of New York to recover certain costs incurred by the United States Government in connection with the arbitration of other claims before the Iran-United States Claims Tribunal at The Hague. The bill would also authorize the Secretary of the Treasury to reimburse the Federal Reserve Bank of New York for its expenses as fiscal agent of the United States in the implementation of the hostage release agreements. It would also allow the Secretary of State to maintain the confidentiality of certain records of the Department of State pertaining to the arbitration of claims before the Iran-United States Claims Tribunal. The steps authorized by the proposed legislation will facilitate the claims settlement process contemplated by those agreements. This bill was introduced by request in the 97th Congress as H.R. 7374 and a hearing held by the Subcommittee on International Economic Policy and Trade of the Foreign Affairs Committee.

Under the Algiers Accords which led to the release of the 52 American hostages in Tehran, the United States and Iran agreed among other things to refer certain claims of U.S. nationals against Iran to binding arbitration before a newly created arbitral body, the Iran-United States Claims Tribunal. Some of those claims had been pending in U.S. courts and had been the subject of judicial injunctions and court-ordered attachments. Pursuant to the Accords, once the hostages had been released, the United States revoked the regulatory authority for those attachments and injunctions, thus rendering them null and void. Following an intensive review of the Accords by the Administration, litigation involving claims which might be presented to the Tribunal was suspended by Executive Order No. 12294, issued on February 24, 1981. That action, and steps taken by the previous Administration in implementation of the hostage release agreements, were upheld

The Honorable
Thomas P. O'Neill, Jr.,
Speaker,
House of Representatives.

by the United States Supreme Court in its decision in Dames & Moore v. Regan on July 2, 1981.

Under the Accords, the Iran-United States Claims Tribunal is charged with deciding the claims of U.S. nationals against Iran arising out of debts, contracts, expropriations or other measures affecting property rights. The Tribunal, whose members include three appointed by the United States, three by Iran, and three third-country arbitrators, has been established at The Hague in the Netherlands and is beginning to adjudicate the several thousand claims filed before it by the January 19, 1982 deadline. The Accords provide that the Tribunal shall decide all cases on the basis of respect for law, and that its decisions shall be final and binding. The Accords also provide that the Tribunal's awards shall be enforceable in the courts of any nation in accordance with its laws.

To help assure payment of awards of the Tribunal in favor of U.S. nationals, some of whom had been successful in obtaining attachments against Iranian assets and property in the United States, a Security Account was also established at a depositary bank of the Netherlands. The Account was funded at an initial level of $1 billion from certain Iranian assets and properties in the United States. Under the Accords, Iran has an obligation to replenish the Security Account whenever payments to successful U.S. claimants cause it to fall below $500 million.

The Accords provide that the claims of U.S. nationals against Iran for less than $250,000 each (the "small" claims) are to be presented to the Tribunal by the Government of the United States, while U.S. nationals with claims of $250,000 or more represent themselves directly. Following an extensive registration program, the Department of State filed some 2,795 "small" claims with the Tribunal on January 18, 1982. The adjudication of such a large number of "small" claims represents an enormous undertaking for the Tribunal which could delay the disposition of hundreds of "large" claims of U.S. nationals. The United States has proposed to Iran that the small claims be settled through negotiation of a en bloc settlement. If a satisfactory settlement can be negotiated, the "small" claims would then have to be individually adjudicated. The enclosed draft bill would authorize the Foreign Claims Settlement Commission to decide claims thus settled in accordance with the provisions and procedures of the International Claims Settlement Act of 1949, as amended, subject to the provisions of the relevant claims settlement agreements. This explicit authorization is necessary to clarify the Commission's ability to adjudicate the claims under Title I of the International Claims Settlement Act. Payment of the Commission's awards would be made in accordance with the provisions of that Act, except that the Secretary of the Treasury would be authorized to make initial payments in the

amount of up to $10,000, as opposed to the lesser amounts currently provided by law and to deduct two percent, rather than the five percent currently provided by law.

Any claims of U.S. nationals, whether "large" or "small", which are not settled will be adjudicated by the Tribunal. Under the Claims Settlement Agreement, the expenses of the Tribunal are borne equally by the Governments of the United States and Iran. To date, the Tribunal has been operating on a relatively modest budget, the majority of expenses having been incurred in connection with organizational matters, the establishment of a Registry, and the hiring of essential staff, including the translators and interpreters necessary to conduct the proceedings in both English and Farsi. As it proceeds to adjudicate claims and render awards, its operating expenditures and therefore the required U.S. contributions will increase. In addition, the Departments of State and Treasury, the Federal Reserve Bank of New York, and other agencies of the United States Government have incurred direct and indirect expenses in connection with the establishment and organization of the Tribunal. These expenses will also increase as the adjudication of claims goes forward.

In addition to United States contributions to the Tribunal, providing a forum for hearing and deciding the claims of United States nationals, the United States Government provides many valuable services to United States claimants, such as the service of documents and the presentation of positions and supporting legal arguments on major issues of common interest. The proposed legislation would require successful claimants to help bear the costs of these Government services to or on behalf of the claimants.

The bill would permit the Government to recover a portion of its expenses by authorizing the Federal Reserve Bank of New York to deduct an amount equal to two percent of any payment from the Security Account in satisfaction of an award of the Tribunal in favor of a U.S. national. The amounts thus deducted will be covered into the miscellaneous receipts of the Treasury as reimbursement to the Government of the expenses it has incurred in connection with the operations of the Tribunal. The agencies incurring those expenses will not directly benefit from the deduction, but will continue to be responsible for justifying to the Congress appropriations necessary to pay their expenses. The reimbursement will be collected only from those U.S. claimants who avail themselves of the Tribunal, receive a favorable award, and are paid from the Security Account. Claimants who do not benefit from both the Tribunal and the Security Account would not be required to contribute to the reimbursement of the Government. The bill also provides that once the deduction has been made, payments to U.S. claimants will be made directly without further delay or any additional deductions. Pursuant to a directive license

issued by the Treasury Department on June 7, the Federal Reserve Bank of New York has been making deductions, and depositing the proceeds into miscellaneous receipts, from accounts received to date in satisfaction of awards of the Tribunal. The bill would ratify this action retroactively.

The bill includes two technical sections intended (a) to preclude duplicate deductions from payments to claimants with "small" claims which are adjudicated by the Foreign Claims Settlement Commission and (b) to authorize the Secretary of the Treasury to reimburse the Federal Reserve Bank of New York for expenses it has incurred as fiscal agent of the United States in implementation of the Algiers Accords.

Finally, the bill resolves a dilemma created by the requirements of the Freedom of Information Act. In order to obtain the most favorable resolution of both private and public U.S. claims before the Iran-United States Claims Tribunal, the Department of State needs to be able to collect information from U.S. claimants and share information with them. Such cooperation and coordination is impaired by the absence of specific legislation on public disclosure. The proposed legislation would provide appropriate rules for the records of the Department of State pertaining to arbitration of claims before the Tribunal.

The claims settlement process put in motion by the Algiers Accords represents one of the largest and most significant efforts of its type in recent U.S. or international practice. It includes the claims of thousands of U.S. nationals, involving billions of dollars in debts, contracts, investments, and other commercial relationships interrupted by the Islamic Revolution in Iran. The successful and expeditious resolution of those claims remains an important objective of the Administration's foreign policy. This bill would contribute significantly to these ends and I urge its early passage.

The Office of Management and Budget has advised that there is no objection to the presentation of this proposal for the consideration of the Congress and that its enactment would be in accord with the program of the President.

Sincerely,

Powell A. Moore
Assistant Secretary for
Congressional Relations

Enclosure

United States Department of State

Washington, D.C. 20520

Dear Mr. President:

I transmit herewith a bill to authorize various agencies of the Executive Branch to take certain actions in furtherance of the settlement of claims between United States nationals and the Government of Iran pursuant to the Algiers Accords of January 19, 1981. The proposed legislation would authorize the Foreign Claims Settlement Commission to adjudicate a number of such claims and would permit the Federal Reserve Bank of New York to recover certain costs incurred by the United States Government in connection with the arbitration of other claims before the Iran-United States Claims Tribunal at The Hague. The bill would also authorize the Secretary of the Treasury to reimburse the Federal Reserve Bank of New York for its expenses as fiscal agent of the United States in the implementation of the hostage release agreements. It would also allow the Secretary of State to maintain the confidentiality of certain records of the Department of State pertaining to the arbitration of claims before the Iran-United States Claims Tribunal. The steps authorized by the proposed legislation will facilitate the claims settlement process contemplated by those agreements. This bill was introduced by request in the 97th Congress as H.R. 7374 and a hearing held by the Subcommittee on International Economic Policy and Trade of the Foreign Affairs Committee.

Under the Algiers Accords which led to the release of the 52 American hostages in Tehran, the United States and Iran agreed among other things to refer certain claims of U.S. nationals against Iran to binding arbitration before a newly created arbitral body, the Iran-United States Claims Tribunal. Some of those claims had been pending in U.S. courts and had been the subject of judicial injunctions and court-ordered attachments. Pursuant to the Accords, once the hostages had been released, the United States revoked the regulatory authority for those attachments and injunctions, thus rendering them null and void. Following an intensive review of the Accords by the Administration, litigation involving claims which might be presented to the Tribunal was suspended by Executive Order No. 12294, issued on February 24, 1981. That action, and steps taken by the previous Administration in implementation of the hostage release agreements, were upheld

The Honorable
George Bush,
President of the Senate.

by the United States Supreme Court in its decision in Dames & Moore v. Regan on July 2, 1981.

Under the Accords, the Iran-United States Claims Tribunal is charged with deciding the claims of U.S. nationals against Iran arising out of debts, contracts, expropriations or other measures affecting property rights. The Tribunal, whose members include three appointed by the United States, three by Iran, and three third-country arbitrators, has been established at The Hague in the Netherlands and is beginning to adjudicate the several thousand claims filed before it by the January 19, 1982 deadline. The Accords provide that the Tribunal shall decide all cases on the basis of respect for law, and that its decisions shall be final and binding. The Accords also provide that the Tribunal's awards shall be enforceable in the courts of any nation in accordance with its laws.

To help assure payment of awards of the Tribunal in favor of U.S. nationals, some of whom had been successful in obtaining attachments against Iranian assets and property in the United States, a Security Account was also established at a depositary bank of the Netherlands. The Account was funded at an initial level of $1 billion from certain Iranian assets and properties in the United States. Under the Accords, Iran has an obligation to replenish the Security Account whenever payments to successful U.S. claimants cause it to fall below $500 million.

The Accords provide that the claims of U.S. nationals against Iran for less than $250,000 each (the "small" claims) are to be presented to the Tribunal by the Government of the United States, while U.S. nationals with claims of $250,000 or more represent themselves directly. Following an extensive registration program, the Department of State filed some 2,795 "small" claims with the Tribunal on January 18, 1982. The adjudication of such a large number of "small" claims represents an enormous undertaking for the Tribunal which could delay the disposition of hundreds of "large" claims of U.S. nationals. The United States has proposed to Iran that the small claims be settled through negotiation of a en bloc settlement. If a satisfactory settlement can be negotiated, the "small" claims would then have to be individually adjudicated. The enclosed draft bill would authorize the Foreign Claims Settlement Commission to decide claims thus settled in accordance with the provisions and procedures of the International Claims Settlement Act of 1949, as amended, subject to the provisions of the relevant claims settlement agreements. This explicit authorization is necessary to clarify the Commission's ability to adjudicate the claims under Title I of the International Claims Settlement Act. Payment of the Commission's awards would be made in accordance with the provisions of that Act, except that the Secretary of the Treasury would be authorized to make initial payments in the

amount of up to $10,000, as opposed to the lesser amounts currently provided by law and to deduct two percent, rather than the five percent currently provided by law.

Any claims of U.S. nationals, whether "large" or "small", which are not settled will be adjudicated by the Tribunal. Under the Claims Settlement Agreement, the expenses of the Tribunal are borne equally by the Governments of the United States and Iran. To date, the Tribunal has been operating on a relatively modest budget, the majority of expenses having been incurred in connection with organizational matters, the establishment of a Registry, and the hiring of essential staff, including the translators and interpreters necessary to conduct the proceedings in both English and Farsi. As it proceeds to adjudicate claims and render awards, its operating expenditures and therefore the required U.S. contributions will increase. In addition, the Departments of State and Treasury, the Federal Reserve Bank of New York, and other agencies of the United States Government have incurred direct and indirect expenses in connection with the establishment and organization of the Tribunal. These expenses will also increase as the adjudication of claims goes forward.

In addition to United States contributions to the Tribunal, providing a forum for hearing and deciding the claims of United States nationals, the United States Government provides many valuable services to United States claimants, such as the service of documents and the presentation of positions and supporting legal arguments on major issues of common interest. The proposed legislation would require successful claimants to help bear the costs of these Government services to or on behalf of the claimants.

The bill would permit the Government to recover a portion of its expenses by authorizing the Federal Reserve Bank of New York to deduct an amount equal to two percent of any payment from the Security Account in satisfaction of an award of the Tribunal in favor of a U.S. national. The amounts thus deducted will be covered into the miscellaneous receipts of the Treasury as reimbursement to the Government of the expenses it has incurred in connection with the operations of the Tribunal. The agencies incurring those expenses will not directly benefit from the deduction, but will continue to be responsible for justifying to the Congress appropriations necessary to pay their expenses. The reimbursement will be collected only from those U.S. claimants who avail themselves of the Tribunal, receive a favorable award, and are paid from the Security Account. Claimants who do not benefit from both the Tribunal and the Security Account would not be required to contribute to the reimbursement of the Government. The bill also provides that once the deduction has been made, payments to U.S. claimants will be made directly without further delay or any additional deductions. Pursuant to a directive license

issued by the Treasury Department on June 7, the Federal Reserve Bank of New York has been making deductions, and depositing the proceeds into miscellaneous receipts, from accounts received to date in satisfaction of awards of the Tribunal. The bill would ratify this action retroactively.

The bill includes two technical sections intended (a) to preclude duplicate deductions from payments to claimants with "small" claims which are adjudicated by the Foreign Claims Settlement Commission and (b) to authorize the Secretary of the Treasury to reimburse the Federal Reserve Bank of New York for expenses it has incurred as fiscal agent of the United States in implementation of the Algiers Accords.

Finally, the bill resolves a dilemma created by the requirements of the Freedom of Information Act. In order to obtain the most favorable resolution of both private and public U.S. claims before the Iran-United States Claims Tribunal, the Department of State needs to be able to collect information from U.S. claimants and share information with them. Such cooperation and coordination is impaired by the absence of specific legislation on public disclosure. The proposed legislation would provide appropriate rules for the records of the Department of State pertaining to arbitration of claims before the Tribunal.

The claims settlement process put in motion by the Algiers Accords represents one of the largest and most significant efforts of its type in recent U.S. or international practice. It includes the claims of thousands of U.S. nationals, involving billions of dollars in debts, contracts, investments, and other commercial relationships interrupted by the Islamic Revolution in Iran. The successful and expeditious resolution of those claims remains an important objective of the Administration's foreign policy. This bill would contribute significantly to these ends and I urge its early passage.

The Office of Management and Budget has advised that there is no objection to the presentation of this proposal for the consideration of the Congress and that its enactment would be in accord with the program of the President.

Sincerely,

Powell A. Moore
Assistant Secretary for
Congressional Relations

Enclosure

A BILL

To facilitate the adjudication of certain claims of United States nationals against Iran, to authorize the recovery of costs incurred by the United States in connection with the arbitration of claims of United States nationals against Iran, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Iran Claims Act".

RECEIPT AND DETERMINATION OF CERTAIN CLAIMS

Sec. 2. (a) The Foreign Claims Settlement Commission of the United States is hereby authorized to receive and determine, in accordance with the provisions of title I of the International Claims Settlement Act of 1949, the validity and amounts of claims by nationals of the United States against Iran which are settled en bloc by the United States. In deciding such claims, the Commission shall apply, in the following order, the terms of any settlement agreement, the relevant provisions of the Declarations of the Government of the Democratic and Popular Republic of Algeria of January 19, 1981, giving consideration to interpretations thereof by the Iran-United States Claims Tribunal, and applicable principles of international law, justice and equity.

(b) The Commission shall certify to the Secretary of the Treasury any awards determined pursuant to subsection (a) of this section in accordance with section 5 of title I of the International Claims Settlement Act of 1949. Such awards shall be paid in accordance with sections 7 and 8 of that title, except that --

(1) the Secretary of the Treasury is authorized to make payments pursuant to section 8(c)(1) in the amount of $10,000 or the principal amount of the award, whichever is less; and

(2) the Secretary of the Treasury is authorized to deduct pursuant to section 7(b) an amount equal to 2 per centum, instead of 5 per centum, of payments made pursuant to section 8(c).

DEDUCTIONS FROM ARBITRAL AWARDS

Sec. 3. (a) Except as provided in section 4, whenever the Federal Reserve Bank of New York shall receive an amount from the Security Account established pursuant to the Declarations of the Democratic and Popular Republic of Algeria of January 19, 1981, in satisfaction of an award rendered by the Iran-United States Claim Tribunal in favor of a United States national, the Federal Reserve Bank of New York shall deduct from the amount so received an amount equal to two per centum thereof as reimbursement to the United

States Government for expenses incurred by the Departments of State and the Treasury, the Federal Reserve Bank of New York, and other agencies in connection with the arbitration of claims of United States nationals against Iran before the Iran-United States Claims Tribunal.

(b) Amounts deducted by the Federal Reserve Bank of New York pursuant to subsection (a) shall be deposited in the Treasury to the credit of miscellaneous receipts.

(c) Nothing in this section shall be construed to affect the payment to United States nationals of amounts received by the Federal Reserve Bank of New York in respect of awards by the Iran-United States Claims Tribunal, after deduction of the amounts specified in subsection (a).

(d) This section shall be effective as of June 7, 1982.

EN BLOC SETTLEMENT

Sec. 4. The deduction by the Federal Reserve Bank of New York provided for in section 3(a) of this Act shall not apply in the case of a sum received by the Bank pursuant to an en bloc settlement of any category of claims of United States nationals against Iran when such sum is to be used for payments in satisfaction of awards certified by the Foreign Claims Settlement Commission pursuant to section 2(b) of this Act.

REIMBURSEMENT TO THE FEDERAL RESERVE BANK OF NEW YORK

Sec. 5. The Secretary of the Treasury is hereby authorized to reimburse the Federal Reserve Bank of New York for expenses incurred by the Bank in the performance of fiscal agency agreements relating to the settlement or arbitration of claims pursuant to the Declarations of the Democratic and Popular Republic of Algeria of January 19, 1981.

CONFIDENTIALITY OF RECORDS

Sec. 6. Records of the Department of State pertaining to the arbitration of claims before the Iran-United States Claims Tribunal shall be exempt from disclosure under section 552 of title 5, United States Code. Such records shall be treated as confidential except that rules, awards, and decisions of the Tribunal and claims and responsive pleadings filed at the Tribunal by the United States on its own behalf shall be made available to the public unless the Secretary of State determines that public disclosure would be contrary to the national interest. Nothing in this section shall be construed as prohibiting the Secretary of State from making information available to any claimant or any other interested person for the purpose of --

(1) assisting in the prosecution or defense of claims;

(2) coordinating participation at the Tribunal by the United States and nationals of the United States; or

(3) informing the public about the work of the Tribunal.

SECTION-BY-SECTION ANALYSIS OF THE PROPOSED IRAN CLAIMS ACT

I. INTRODUCTION

The proposed legislation (hereinafter referred to as "the Bill") contains authority for certain actions by the Foreign Claims Settlement Commission, the Department of the Treasury, the Federal Reserve Bank of New York and the Department of State in implementation of the Algiers Accords of January 19, 1981, which achieved the release of the American hostages from Iran.

Specifically, the Bill authorizes the Foreign Claims Settlement Commission to adjudicate claims by United States nationals against Iran in the event that they are settled by agreement between the United States and Iran. It also authorizes the Secretary of the Treasury to make payments in satisfaction of the Commission's determinations. It provides authority and procedures for reimbursement to the United States Government of expenses incurred by the Departments of State and the Treasury, the Federal Reserve Bank of New York and other agencies for the benefit of U.S. nationals who obtain arbitral awards against Iran from the Iran-United States Claims Tribunal. Finally, the Bill would allow the Secretary of State to maintain the confidentiality of certain records of the Department of State pertaining to the arbitration of claims before the Iran-United States Claims Tribunal.

The Algiers Accords consisted primarily of two "declarations" by the Government of Algeria which were adhered

to by the United States and Iran. The first of these (the "General Declaration") provided inter alia for the revocation of sanctions, the transfer of certain Iranian financial assets and property, and the nullification of certain claims and attachments through reference to binding arbitration in accordance with the second declaration (the "Claims Settlement Agreement"). The General Declaration also provided for the establishment of a Security Account, funded from transferred Iranian assets at an initial level of $1 billion, to secure the payment of arbitral awards against Iran. Iran is obliged to replenish the Security Account whenever the payment of claims causes it to fall below $500 million. The Claims Settlement Agreement provided for the establishment of an Iran-United States Claims Tribunal at The Hague to decide, inter alia, claims by nationals of the United States against Iran arising out of debts, contracts, expropriations or other measures affecting property rights. The expenses of the Tribunal are borne equally by the Governments of Iran and the United States.

In accordance with the Claims Settlement Agreement, claims of U.S. nationals against Iran for less than $250,000 each are to be presented to the Tribunal by the United States Government rather than by the claimants themselves. The Bill would authorize the Foreign Claims Settlement Commission and the Department of the Treasury respectively to adjudicate and pay these "small" claims in the event that Iran and the United States agree to settle them rather than to arbitrate them before the Tribunal.

Under implementing agreements signed on August 17, 1981, by the Federal Reserve Bank of New York as Fiscal Agent of the United States, Bank Markazi Iran, Banque Centrale d'Algerie as escrow agent and the Dutch Central Bank and its subsidiary depositary bank, arbitral awards rendered by the Tribunal against Iran in favor of U.S. nationals will be certified for payment by the Tribunal and paid from the Security Account to the Federal Reserve Bank of New York. The Bill would authorize the reimbursement to the United States Government of expenses incurred in connection with the Tribunal and the Security Account by deducting two per cent from each amount received from the Security Account for payment to a U.S. national in satisfaction of a Tribunal award.

The question of further distribution of the amounts received by the New York Federal Reserve Bank is not addressed in the relevant agreements. Under the proposed legislation, these amounts will be transmitted directly to the U.S. national in whose favor an award has been made immediately and without any additional deduction.

The Department of State is charged with implementing the Claims Settlement Agreement of the Algiers Accords. The Department monitors Tribunal activities, analyzes Iranian factual and legal arguments, and prepares factual and legal materials to support U.S. Government and U.S. claimants' positions. As the legal representative of 2,795 small claimants, the Department collects all the information

necessary to prepare and present their claims before the Tribunal. The Department also represents the United States Government at the Tribunal, filing claims on its behalf and responding to claims filed against it by the Government of Iran. Finally, the Department identifies common legal issues and coordinates the presentation by large and small private claimants and by the Government of such issues before the Tribunal. Under the proposed legislation, the Department will be able to protect records which may be used by our adversaries against the Government or against U.S. claimants at the Tribunal. At the same time, the Department will be able to work with claimants and legal scholars in order to achieve a favorable resolution of U.S. claims pending before the Tribunal.

II. PROVISIONS OF THE BILL

Section 1. Short Title

This section states that the Bill may be cited as the "Iran Claims Act".

Section 2. Receipt and Determination

This section authorizes the Foreign Claims Settlement Commission of the United States, a component of the Department of Justice, to adjudicate claims of U.S. nationals against Iran in the event that they are settled as between Iran and the United States.

Under the Claims Settlement Agreement, claims of U.S. nationals which are, in the aggregate, for less than $250,000

each (the "small" claims) are to be presented to the Iran-United States Claims Tribunal by the United States Government rather than the claimants themselves. Prior to the January 19, 1982 deadline, some 2,795 small claims were filed by the Department of State with the Tribunal. Arbitration of such a large number of small claims would place a severe burden on the Tribunal. The United States has proposed to Iran that such claims be settled on a lump-sum (or en bloc) basis. If such a settlement were negotiated, the amount received in discharge of the claims thereby settled would be distributed among individual claimants on the basis of adjudication by the Foreign Claims Settlement Commission.

Subsection (a) makes clear the authority of the Commission to adjudicate the claims on the basis of title I of the International Claims Settlement Act of 1949, as amended, in the event of a settlement. The precise nature of a settlement cannot be predicted. To ensure consistency of result regardless of the form it takes, the Commission is directed to apply the terms of any settlement agreement, relevant provisions of the Algiers Accords, giving consideration to intepretations thereof by the Tribunal, and the applicable principles of international law, justice and equity.

Subsection (b) also directs the Commission to certify its awards under section 5 of the International Claims Settlement Act to the Secretary of the Treasury for payment in accordance with the provisions of sections 7 and 8 of that Act. Section

8(c)(1) currently limits the initial payment which the Secretary of the Treasury may make on account of an award to the amount of $1,000 or the principal amount of the award, whichever is less. Subsection (b)(1) authorizes the Secretary of the Treasury to make such payments to successful claimants up to the amount of $10,000 or the principal amount of the award, whichever is less. Payments on the unpaid balance of awards in excess of $10,000 would thereafter be made in accordance with the existing provisions of Section 8(c) of title I of the International Claims Settlement Act, i.e., from time to time on a pro rata basis in the same proportion as the total amount available for distribution bears to the aggregate unpaid balance of principal or interest of all such awards. Section 7(b) of the International Claims Settlement Act currently reimburses the Government in the amount of 5 per centum of payments made under section 8(c)(1). Subsection (b)(2) reduces this recovery to 2 per centum to eliminate the disparity between claimants appearing before the Tribunal and those whose claims are settled by the Commission.

Section 3. Deductions from Arbitral Awards

This section, consisting of four subsections, establishes the basic structure for effecting reimbursement of the expenses incurred by the U.S. Government on behalf of U.S. claimants in connection with the Iran-United States Claims Tribunal and the Security Account. Those expenses include both the U.S. contribution to the Tribunal for its capital and operating

expenses (which are borne equally by Iran and the United States) and the U.S. share of the management fees associated with the Security Account, as well as the costs incurred by U.S. Government agencies and the Federal Reserve Bank in connection with U.S. participation in the Tribunal.

Subsection (a) generally directs the Federal Reserve Bank of New York to deduct the reimbursement from each payment received from the Security Account in satisfaction of an arbitral award, including any interest thereon, by the Tribunal in favor of a U.S. claimant. Thus, reimbursement is collected only from those claimants who avail themselves of the Tribunal, receive a favorable award and are paid from the Security Account. Those claimants who do not benefit from both the Tribunal and the Security Account would not be required to contribute to the reimbursement of the Government.

This subsection establishes the amount of the deduction at two percent of the amount received by the Federal Reserve Bank. It is expected that the total amount of Tribunal awards in favor of U.S. nationals will exceed $4 billion and that Iran will fulfill its obligation to replenish the Security Account whenever the balance therein falls below $500 million. The deduction would therefore obtain reimbursement for the United States of at least $80 million. That amount is estimated to be sufficient to meet the anticipated costs, both direct and indirect, of U.S. participation in the Tribunal.

Subsection (b) provides that the amounts deducted for reimbursement to the Government of its expenses shall be covered into the miscellaneous receipts of the Treasury. The agencies incurring expenses for the operations of the Tribunal will not be able to use any of these funds. Rather, the agencies will be responsible for justifying to the Congress appropriations in amounts necessary to pay their expenses.

Subsection (c) makes clear that the authority to make the deductions provided by this section does not otherwise affect the distribution of amounts received by the Federal Reserve Bank in satisfaction of awards by the Tribunal. After the two per cent deduction is made, the balance of the award will be transmitted in full and at once to the successful claimant.

Subsection (d) establishes June 7, 1982 as the effective date of this section. On that date, the Treasury Department issued a directive license authorizing the Federal Reserve Bank of New York to deduct two percent of each amount received in satisfaction of an award of the Tribunal and to pay the balance immediately thereafter to the awardee without further deduction or alteration. Monies so deducted have been deposited in the general funds miscellaneous receipts. This subsection is intended to ratify the Treasury Department's action in issuing the directive license.

Section 4. En Bloc Settlement

Section 4 provides an exception to the requirement for a two percent deduction in the case of any amount received by the

Federal Reserve Bank in satisfaction of a settlement of claims of U.S. nationals which are to be adjudicated by the Foreign Claims Settlement Commission. Section 2(b)(2) of the Bill separately provides for a two percent deduction from each payment by the Department of the Treasury as reimbursement for U.S. Government expenses in the case of claims decided by the Foreign Claims Settlement Commission. In the absence of the exception provided in this section of the Bill, therefore, U.S. nationals with claims against Iran which were adjudicated by the Foreign Claims Settlement Commission rather than the Tribunal could be subjected to duplicative deductions from their awards -- first by the Federal Reserve Bank under section 3(a), and second by the Treasury Department under section 2(b)(2) of the Bill.

Section 5. Reimbursement to the Federal Reserve Bank

This section authorizes the Secretary of the Treasury to reimburse the Federal Reserve Bank of New York for its expenses in acting as Fiscal Agent of the United States pursuant to its Fiscal Agency Agreement with the Treasury dated August 14, 1981, in connection with banking arrangements which implement the Algiers Accords. These expenses of the Federal Reserve Bank of New York have been taken into account in the establishment of the level of reimbursement to be deducted from awards under section 3(a) of the Bill. The section is intended to clarify the authority of the Secretary of the Treasury to make such reimbursements in the context of this arbitration,

rather than rely on the more general authority of section 1023 of title 31 of the United States Code.

Section 6. Confidentiality of Records

This section would allow the Secretary of State to maintain the confidentiality of certain records of the Department of State pertaining to the arbitration of claims before the Iran-United States Claims Tribunal. The purpose of this section is to enable the Department of State to coordinate the presentation of U.S. claims before the Tribunal and assist U.S. claimants to effectively present their claims. The disclosure provisions of the Freedom of Information Act impair the Department's ability to carry out this function. Claimants cannot be sure the Department will be ble to protect confidential information provided by claimants; documents received by the Tribunal, unless classified, may be requested by the public; and the Department risks being found to have made a public disclosure of its proposed positions and arguments whenever it seeks to coordinate with a group of claimants.

The Department will remain under a duty to make available to the public claims and responsive pleadings filed at the Tribunal on behalf of the U.S. Government and awards, decisions, and rules of the Tribunal. The Department, however, would be able to respect the Tribunal's policy of confidentiality for certain types of information. For example, under the Tribunal's Rules of Procedure, a claimant may request that

an award not be made public or that only portions of the award from which the identity of the parties, other identifying facts and trade secrets have been deleted be made public. The Secretary of State would be authorized under this section to withhold from publication those portions excised by the Tribunal.

Under this section, the Secretary of State, in his discretion, may make available information records to selected persons for specific purposes. Under paragraph (1) the Department may provide to a U.S. claimant, for example, a legal memorandum on a particular issue of concern to that claimant without having to release that memorandum to the general public. Similarly, it could solicit comments on its legal memoranda from legal scholars who are experts in that particular field. Under paragraph (2), the Department could receive legal memoranda, Statements of Claim, and other material from claimants in order to identify common issues and coordinate their presentation before the Tribunal without having to release those materials to others. Paragraph (3) allows the Department to make available some of the Tribunal's interlocutory orders. The Tribunal issues thousands of such orders. While a summary of these orders reveal the practice of the Tribunal and is thus of public interest, the release of all the individual orders is impracticable.

Insofar as an individual's files are concerned, the Privacy Act remains applicable.

Iran

NSC/S PROFILE ~~CONFIDENTIAL~~ ID 8302491

RECEIVED 13 APR 83 18

TO CLARK FROM HILL DOCDATE 13 APR 83

54863

KEYWORDS: IRAN ALGERIA

LEGAL ISSUES

Summe

SUBJECT: CLAIMS NEGOTIATIONS W/ IRAN

ACTION: PREPARE MEMO FOR CLARK DUE: 15 APR 83 STATUS S FILES

FOR ACTION	FOR CONCURRENCE	FOR INFO
KEMP	KIMMITT	DUR
		WETTERING
		NORTH

✓ O.K. Cleared to Kemp. — Clear to Kemp, with strong recommendation that Hill memo also be sent to Justice for review
4-14-83

COMMENTS 2- File: Legal: Iran

REF# 8310468 LOG 8201349 NSCIFID (J /)

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19

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54865	MEMO HILL TO CLARK RE CLAIMS NEGOTIATION WITH IRAN	2	4/13/1983	B1

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]
B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

Iran

7912

MEMORANDUM

NATIONAL SECURITY COUNCIL

November 3, 1983

INFORMATION

MEMORANDUM FOR ROBERT M. KIMMITT

FROM: PAUL B. THOMPSON PT

SUBJECT: Access of the Khomeini Regime to U.S. Courts

The law firm of Short and Billy has written Mr. McFarlane to make him aware of the Khomeini Regime's continued access to U.S. courts (Tab A). The Islamic Republic of Iran is currently suing one of the firm's clients in the D.C. District Court, which has allowed the suit despite defendant's argument that access should be denied to such a hostile foreign government.

Short and Billy contacted Judge Clark on May 25 of this year with the request that the court decision be reviewed to determine whether allowing the Khomeini Regime access to U.S. courts is consistent with U.S. policies toward Iran (Tab B).

Judge Clark's response to the law firm succinctly stated the executive position on the matter (Tab C). Since the recent letter to Mr. McFarlane appears to reopen the identical issue, I see no need to respond.

Geoffrey Kemp concurs gpk

Attachments

Tab A Incoming letter from Short and Billy dated Oct. 27
Tab B Letter from Short and Billy dated May 25
Tab C Response to Short and Billy dated June 1

7912

OCT 29 1983

SHORT & BILLY
ATTORNEYS AT LAW
SUITE 2001
275 MADISON AVENUE
NEW YORK, NEW YORK 10016
(212) 679-8400

MICHAEL BILLY, JR.
SKIP SHORT*

* ALSO ADMITTED IN WASHINGTON D.C.

October 27, 1983

Mr. Robert C. McFarlane
Assistant to the President
For National Security Affairs
National Security Council
Old Executive Office Building
Washington, D.C. 20506

Re: Islamic Republic of Iran's
Access to United States Courts

Dear Mr. McFarlane:

This firm represents N.K. Behroozian, an Iranian exile, who is being sued by the Islamic Republic of Iran in the United States District Court in Washington, D.C. We moved to dismiss the action arguing that Iran should not be permitted to use the United States Courts at the same time that it engages in a state of hostility toward this country.

Judge Bryant ruled that unless there is a statement of nonrecognition, the Khomeini Regime is to be permitted access to the United States Courts, despite the hostile acts it has committed against the United States.

We previously requested that the United States review this decision and determine whether allowing the Khomeini Regime access to this country's courts is consistent with our government's policies. Enclosed is a copy of Judge Bryant's decision, my letter of May 25, 1983 to Mr. William P. Clark and Mr. Clark's response of June 1, 1983.

In light of the Khomeini Regime's continued hostility toward our government, and the possibility of its involvement in the recent tragedy in Lebanon, I believe that you should be made aware of the Khomeini Regime's current access to the United States Courts

and the opportunity of the United States to deny the Khomeini Regime that access to our courts.

If you desire any further information, please let me know.

Sincerely,

Skip Short

SS:jc
encs.
cc: Secretary of Defense Caspar W. Weinberger
Secretary of State George P. Schultz
Jacob Dweck, Esq.
Bruno Ristau, Esq.

SHORT & BILLY
ATTORNEYS AT LAW
SUITE 1811
275 MADISON AVENUE
NEW YORK, NEW YORK 10016
(212) 679.8400

MICHAEL BILLY, JR.
SKIP SHORT*

*ALSO ADMITTED IN WASHINGTON D.C.

May 25, 1983

Mr. William P. Clark
Assistant to the President
For National Security Affairs
National Security Council
Old Executive Office Building
Washington, D.C. 20506

Re: Islamic Republic of Iran's
Access to United States Courts

Dear Mr. Clark:

This firm represents N.K. Behroozian, an Iranian exile, who is being sued by the Islamic Republic of Iran in the United States District Court in Washington, D.C. We moved to dismiss the action arguing that Iran should not be permitted to use the United States Courts at the same time that it engages in a state of hostility toward this country.

Judge Bryant ruled that unless there is a statement of nonrecognition, the Khomeini Regime is to be permitted access to the United States Courts, despite the hostile acts it has committed against the United States.

In light of the Khomeini Regime's history of animosity toward this country which continues unabated (recent news reports concerning Iran's alleged involvement in the bombing of our Embassy in Lebanon are consistent with Iran's public pronouncements), we request you to review this decision (a copy of which is enclosed) to determine whether allowing the Khomeini Regime access to this country's courts is consistent with our government's policies.

Please let me know the position of the United States on this matter.

Thank you.

Sincerely,

Skip Short

SS:jc
encl.
cc: Nicholas A. Veliotes
David R. Robinson, Esq.
Jacob Dweck, Esq.

(39)

APR 11 1983

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ISLAMIC REPUBLIC OF IRAN BROADCASTING,	:	
Plaintiff,	:	
v.	:	C.A. No. 82-1371
SOTHEBY PARKE BERNET INC.,	:	
Defendant and Third-Party Plaintiff,	:	
v.	:	
N.K. BEHROOZIAN and JERRY ABITBOL,	:	
Third-Party Defendants.	:	

FILED

MAY 1 1983

JAMES F. DAVEY, Clerk

MEMORANDUM AND ORDER

A. Background

This case is before the court on counterclaim defendants' motion to dismiss for lack of jurisdiction. The case involves a dispute over the ownership of a Stradivarius violin, an antique violin case, and two antique violin bows.

In November 1981, Mr. N.K. Behroozian, an Iranian emigree living in Paris, authorized Mr. Jerry Abitbol of New York to act as his agent in selling these rare musical instruments. Mr. Abitbol retained the auction house of Sotheby, Parke, Bernet, Inc. (Sotheby's) to handle the sale. However, on March 18, 1982, the day of the scheduled auction, Sotheby's was contacted by the

Islamic Republic of Iran Broadcasting (IRIB), an agency of the Iranian Government. IRIB claimed that it was the true owner of the instruments and asked Sotheby's to withdraw the instruments from auction. Sotheby's complied.

Two months later, IRIB filed the instant suit, asking the court to declare that IRIB is the owner of the instruments and to direct Sotheby's to immediately deliver the instruments to IRIB's counsel. Sotheby's, in turn, brought an interpleader counterclaim against N.K. Behroozian and Jerry Abitbol. The counterclaim stated that Sotheby's was unable to determine which of the rival claimants was the true owner and that Sotheby's was therefore exposed to multiple lawsuits and liability if it released the instruments to any one of the claimants. The counterclaim asked the court to discharge Sotheby's from liability and to determine the true owner of the instruments.

In their respective answers to the counterclaim, Behroozian and IRIB each asserted full ownership of the instruments. Behroozian and Abitbol also filed a counterclaim against IRIB for injurious falsehood, disparagement of property and wrongful and tortious interference of contract. On November 17, 1982, by agreement and stipulation of all the parties, IRIB's complaint against Sotheby's was dismissed with prejudice. Sotheby's continues to maintain physical custody of the instruments.

B. Arguments in Support of the Motion to Dismiss

Counterclaim defendants Behroozian and Abitbol contend that

the counterclaim for interpleader suffers from three separate jurisdictional defects:

1. IRIB has no standing to sue in American courts because the United States Government does not recognize the Islamic Republic of Iran.

2. This court lacks personal jurisdiction over Behroozian because Behroozian has not been validly served, is beyond the reach of service of process, and has not voluntarily consented to appear before the court. Since Behroozian is an indispensable party within the meaning of Rule 19(a) of the Federal Rules of Civil Procedure, the suit must be dismissed in his absence.

3. This court lacks subject matter jurisdiction because the only claimants to the instruments are Behroozian and IRIB, two aliens. When Sotheby's was excused from the lawsuit, the basis for this court's diversity jurisdiction was removed.

C. Analysis

For the reasons discussed below, none of counterclaim defendants' arguments can support a motion to dismiss.

1. Standing

Counterclaim defendants and plaintiff agree that if a foreign government is at war with the United States or if that government is not recognized by the United States, it lacks standing to sue in the United States courts. The parties also

> relationship, short of war, with a recognized sovereign power as embracing the privilege of resorting to United States courts. Although the severance of diplomatic relations is an overt act with objective significance in the dealings of sovereign states, we are unwilling to say that it should inevitably result in the withdrawal of the privilege of bringing suit. Severance may take place for any number of political reasons, its duration is unpredictable, and whatever expression of animosity it may imply does not approach that implicit in a declaration of war. [376 U.S. at 410-11 (footnote omitted).]

Here too the court is confronted with a severance of diplomatic relations, but not nonrecognition. Here too the court is "hardly ... competent to undertake assessments of varying degrees of friendliness or its absence, and ... [is] constrained to consider any relationship, short of war, with a recognized sovereign power as embracing the privilege of resorting to United States courts." Counterclaim defendants have not cited any cases which would undercut this conclusion.

2. Service

Counterclaim defendant Behroozian contends that he has not, and cannot, be served in this matter. And in affidavits attached to his motion to dismiss and to his reply memorandum, Behroozian emphasizes that he never authorized anyone to accept service on his behalf.

The best that can be said for this argument is that it is too little, too late. The issue of service was never raised until the filing of the instant motion. Behroozian and Abitbol made no mention of it in their answer to IRIB's complaint on August 23,

1982, or to IRIB's amended complaint on November 16, 1982. Meanwhile, Abitbol retained the law firm of Steinburg, Van Caneghan and Schrammer to represent both his own and Behroozian's interests against IRIB's suit. The record shows that Mr. Schrammer of that firm accepted service for both Behroozian and Abitbol on at least two occasions.[1] Moreover, Abitbol testified under oath in his deposition that he was authorized to retain counsel on Behroozian's behalf. Abitbol Deposition at 7:23-25; 8:1-6. Under these circumstances, there can be little doubt that Behroozian has been properly served.

3. Subject Matter Jurisdiction

Counterclaim defendants argue that this court lacks subject matter jurisdiction over this action because the two claimants to the disputed instruments--Behroozian and IRIB--are both aliens. Counterclaim defendants point out that under 28 U.S.C. § 1335, the jurisdictional authority cited in Sotheby's interpleader counterclaim, subject matter jurisdiction is based on diversity of citizenship, as defined in 28 U.S.C. § 1332. An action between two aliens would not lie in the federal courts under § 1332.

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[1] Mr. Schrammer signed a letter accepting service of process on behalf of both Behroozian and Abitbol (Exhibit C to IRIB's opposition filed December 2, 1982), and accepted service for a stipulation consenting to Sotheby's retention of the disputed instruments (Exhibit D to IRIB's opposition). Furthermore, in the praecipe announcing the withdrawal of Mr. Schrammer's law firm from this case, the law firm stated it "withdraws as attorneys for Counterclaim Defendants N.K. Behroozian and Jerry Abitbol".

In evaluating counterclaim defendants' contention, the court notes preliminarily that there is no question concerning the validity of the court's jurisdiction over the original lawsuit brought by IRIB against Sotheby's. In its answer to the complaint, Sotheby's admitted that this court had jurisdiction pursuant to 28 U.S.C. § 1332(a)(4) (Cum. Supp. 1980) and § 2201.[2] Section 1332(a)(4) provides that:

> The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between ... a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

There is no doubt but that the value of a Stradivarius violin exceeds $10,000, or that IRIB qualifies as a foreign state under 28 U.S.C. § 1603(a) (Cum. Supp. 1980).[3]

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[2]The complaint alleged jurisdiction under 28 U.S.C. §§ 1331(a), 1332(a)(4), and 2201. However, IRIB has not specified what federal question under § 1331(a) is involved in this case. And § 2201, which authorizes this court to give declaratory relief, cannot serve as an independent basis for jurisdiction. See, e.g., Potomac Passengers Ass'n v. Chesapeake & O. Ry. Co., 520 F.2d 91 (D.C. Cir. 1975). As a practical matter, therefore, jurisdiction in the original action was based on diversity of the parties, as defined in § 1332(a)(4).

[3]Section 1603 provides that:

> For purposes of this chapter--
>
> (a) A "foreign state", except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).
>
> (b) An "agency or instrumentality of a

(Continued)

In its answer to the complaint, Sotheby's also admitted that venue in the District of Columbia was proper under 28 U.S.C. § 1391(c). Section 1391(c) provides that:

> A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes.

Although Sotheby's is a New York corporation, it is licensed to do business, and does business, in the District of Columbia.

Counterclaim defendants do not deny that this court had jurisdiction over the original action brought by IRIB against Sotheby's. The only question before the court, therefore, is whether Sotheby's filing of an interpleader counterclaim and subsequent discharge from liability removed the jurisdictional basis for the lawsuit.

Counterclaim defendants argue that it did. But Republic of China v. American Express Co., 195 F.2d 230 (2d Cir. 1952), is strong authority to the contrary. In that case, the Republic of China (Taiwan) and one of its agencies sued the American Express

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foreign state" means any entity--

> (1) which is a separate legal person, corporate or otherwise, and
>
> (2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and
>
> (3) which is neither a citizen of a State of the United States as defined in section 1332(c) and (d) of this title, nor created under the laws of any third country.

Co., Inc. to recover a deposit held by American Express in their name. American Express admitted that it was holding the deposit in the name of the governmental agency, but said that it was unable to determine which Chinese government was entitled to withdraw the funds--the new People's Republic or the old Republic of China. In response to the suit, American Express interpleaded the rival claimants. The district court granted the interpleader and discharged American Express from liability. Whereupon the Republic of China, like Behroozian and Abitbol here, argued that the original diversity jurisdiciton of the court had been destroyed. In rejecting this argument, the First Circuit reasoned as follows:

> The appellants' argument ... is based upon the theory that the order, by discharging the appellee from liability, left no one but aliens as parties to the suit who will then be in litigation with each other in an action separate and distinct from the initial one. We cannot agree. The subsequent litigation will be ancillary to the original suit and the initial jurisdiction of that is sufficient. [Republic of China, supra, at 234 (citations omitted).]

Counterclaim defendants would apparently distingish Republic of China on the ground that American Express' interpleader action was brought under Fed. R. Civ. P. 22, while Sotheby's interpleader action was brought under 28 U.S.C. § 1335. Counterclaim defendants correctly point out that the jurisdictional requirements for the two kinds of interpleader actions differ and that in a statutory interpleader, jurisdiction must be based on diversity as defined by 28 U.S.C. § 1332.

But in ruling on the motion to dismiss, the court is not

bound by the jurisdictional citation given in the counterclaim for interpleader. Washington Trust Co. v. Gillespie, 397 F. Supp. 1337 (D. Del. 1975). To rule otherwise would hold one party accountable for the pleading errors of another. It would also defeat the purpose of the interpleader remedy--to provide an efficient means of adjudication among multiple claimants to property held by a nonclaimant.[4]

It appears to the court that this interpleader action could have been brought under Rule 22(1), which provides in part that "[a] defendant exposed to [multiple] liability may obtain such interpleader by way of a cross-claim or counterclaim." The court therefore concludes that Republic of China, supra, is controlling, and that counterclaim defendants' arguments that this court lacks subject matter jurisdiction must be rejected.

Conclusion

For the reasons discussed above, it is hereby ORDERED that counterclaim defendants' motion to dismiss is denied.

UNITED STATES DISTRICT JUDGE

Date:

March 31, 1983

[4]Moreover, since Behroozian and Abitbol stipulated to Sotheby's discharge based on Sotheby's interpleader action, it seems inconsistent for them now to dispute the manner in which the interpleader counterclaim was pleaded.

THE WHITE HOUSE

WASHINGTON

June 1, 1983

Dear Mr. Short:

Thank you for your letter of May 25 enclosing a copy of a "Memorandum and Order" in Islamic Republic of Iran Broadcasting v. Sotheby Parke Bernet, Inc., and urging that we review the decision to determine whether Iran should have access to our courts, consistent with United States Government policies.

As you are aware, access to our courts is a judicial matter with which the executive is constitutionally constrained from interfering under separation of powers. While it may be that the executive may declare a particular relationship or lack of relationship which would be determinative of the judicial question of access, the question whether such a relationship has been declared is a judicial question. If what you seek is a different declaration of U.S.-Iran relations than that determined to be prevailing by the court, there are many far more compelling factors which preclude such a redeclaration.

Thank you for your inquiry.

Sincerely,

William P. Clark

Mr. Skip Short
Short & Billy
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275 Madison Avenue
New York, New York 10016